IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN,

JAIPUR BENCH, JAIPUR

S. B. CIVIL MISC. APPEAL NO. 262/2004
Martin & Harris P. Ltd & Ano. V Rajendra Mehta & Ors.

Date of Judgment: 18th April 2007

Hon'ble Mr. Justice R. S. Chauhan

Mr. H. L. Tikku, Sr. Advocate with
Mr. Suresh Pareek and
Mr. N. C. Sharma for the Appellant
Mr. R. K. Agarwal for the Respondent.

REPORTABLE

(Per Court):

The dispute over provisional rent under Section 7 of the Rajasthan Rent Control Act, 1950 (henceforth to be referred to as 'the Act of 1950', for short) has brought the parties before this court. The appellants—the tenants—are challenging the order dated 9-1-2004 passed by the Additional District and Sessions Judge, No. 6, Jaipur City, Jaipur to the extent the learned Judge has determined the provisional rent of the premises rented to the appellants @ Rs. 1,00,000/- per month.

This case has a checkered history. One Mr. Prem Chand

Khinduka (henceforth to be referred to as ‘the previous owner’, for short) was the owner of a building, popularly known as the ‘Khinduka Bhawan’, situated at 2844, Circle No. 13, New Colony, Chowki Hawali, Jaipur. It is a two story high building. Vide lease deed dated 1-8-1963, which was registered on 10-9-1963, he let out the front part of the premises to the appellant Company. Since the appellant Company needed more space in the premises, an additional portion (the back portion of the building) was rented out to the appellants on 7-6-1966. However, in 1971, the previous owner filed a civil suit for eviction of the appellants from the front portion of the building before the Court of Additional Munsiff. Subsequently, in April 1972, he filed another suit for eviction of the appellants from the back portion of the building. During the pendency of the two suits, the previous owner also filed a suit for fixation of standard rent under Section 6(2) of the Act of 1950. Vide order dated 28-4-1979, the suits for eviction were decreed in favour of previous owner. Vide order dated 23-5-1982, the standard rent for the building was fixed at Rs. 500/- per month. It is the appellants’ case that they

have been paying the said standard rent ever since then.

However, as the appellants were aggrieved by the eviction order dated 28-4-1979, they filed an appeal against the said order. Eventually, a Second Appeal was filed before this court, registered as S. B. Civil Second Appeal No. 44/ 1987. During the pendency of the said Second Appeal, the respondents moved an application before this court under Section Order 22, Rule 10 of the Civil Procedure Code (‘the Code’, for short) for being impleaded as a party. For, according to the respondents they had bought the property through five registered sale deeds dated 23-12-1995. However, vide judgment dated 5-8-1996, this court not only dismissed the application under Order 22, Rule 10 of the Code, but also quashed and set aside the eviction order dated 28-4-1979.

Thereafter, in November 2002, the respondents filed a suit for eviction against the appellants. The said suit is still pending before the Additional Civil Judge (Senior Division),

Jaipur. Meanwhile, the respondents also filed a suit for fixation of Standard rent under Section 6 of the Act of 1950. According to the appellants, in the said suit, the respondents did not reveal to the learned trial court about the previous fixation of standard rent vide order dated 23-5-1982. According to the appellants, the suit was fixed for framing of issues. However, the learned civil court did not frame any issues on 28-11-2002, 15-1-2003, and 25-2-2003. On 4-3-2003, the respondents moved an application under Section 7 of the Act for fixation of provisional rent of the rented premises. On 9-12-2003, the appellants moved an application before the learned trial court for framing two issues with regard to the maintainability of the suit for fixation of standard rent and about the applicability of res judicata in the said case as the standard rent was already fixed vide order dated 23-5-1982. Vide order dated 9-1-2004, the learned Judge while framing the issues, also fixed the provisional rent of the rented premises as Rs. 1,00,000/- per month. Hence, this appeal before this court.

Mr. H.L. Tikku, the learned counsel for the appellants, has raised various contentions before this court: firstly, the standard rent is not fixed qua the parties, but is fixed for the building in question. Once the standard rent is fixed, it cannot be changed unless the case is brought within the scope of Section 10 of the Act. The respondents have failed to bring the case under Section 10 of the Act. Since the standard rent was fixed vide order dated 23-5-1982, the same cannot be changed by filing another suit under Section 6 of the Act as has been done by the respondents. Therefore, the application under Section 6 of the Act is non-maintainable.

Secondly, the application under Sections 6 and 7 of the Act is hit by res judicata, as the standard rent has already been fixed by the order dated 23-5-1982. The order fixing standard rent is qua the premises and is an order in rem and not in persona. Therefore, the suit under Section 6 and the application under Section 7 of the Act are not maintainable.

Thirdly, Section 7 of the Act is dependent on Section 6 of

the Act. Since the suit under Section 6 of the Act is non-maintainable, prior to fixing the provisional rent, the learned Judge should have decided the preliminary objection about the maintainability of the application under Section 7 of the Act. He has omitted to do so. Therefore, he has committed an illegality.

On the other hand, Mr. R. K. Agarwal, the learned counsel for the respondents, has contended that the order dated 23-5-1982 was passed under Section 6 (2) of the Act of 1950. However, subsequently in the case of Khem Chand v State of Rajasthan and Ano. (1999 (2) WLC 228), this court declared Section 6 (2) of the Act of 1950 as unconstitutional. After the very provision under which the order dated 23-5-1982 was passed, has been declared unconstitutional, the order stands eclipsed.

Secondly, standard rent is not fixed in perpetuity. Rent is a relative concept. It is fixed on the basis of various factors that are always changing. Hence, it is a variable factor and

not a constant one.

Thirdly, in the order dated 23-5-1982, the parties before the court were the previous owner and the appellants. Presently, the contest is between the appellants and the respondents—the subsequent owners. Therefore, the parties to the suit have changed. Hence, the order dated 23-5-1982 cannot act as a res judicata to the present suit.

Fourthly, the standard rent was fixed at Rs. 500/- in 1982. However, ever since then, the rental value in the area has skyrocketed. The premises are standing in a posh colony of Jaipur, the building is being used for commercial purposes, and therefore the standard rent requires to be re-fixed. The power to fix the standard rent does not emanate from Section 10 of the Act of 1950; it flows from Section 6 of the Act of 1950. Hence, in order to do substantial justice to the parties, the court can re-fix the standard rent under Section 6 and the provisional rent under Section 7 of the Act of 1950.

Lastly, fixation of provisional rent, by its very nature, is an interim fixation and not a final one. According to Section 7 (5) of the Act, in case the appellant pays more rent than is finally fixed as the standard rent, the excess amount can be adjusted in the said standard rent. Hence, this court has rarely interfered with the fixation of the provisional rent.

We have heard the learned counsels for the parties and have perused the impugned order.

The word “rent” has not been defined in the Act of 1950. However, according to Concise Oxford Dictionary it means, “tenant’s periodical payment to owner or landlord for use of land or house or room.” According to Section 105 of the Transfer of Property Act, the word ‘rent’ is defined as under:

> 105. Lease defined.-- A lease of immoveable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms

> Lessor, lessee, premium and rent defined.-- The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

Thus, the rent consists of the following elements:

1. The rent is related to immovable property, i. e. leased property called “premises” under the Act.
2. It is to be rendered as money, share of crop, service or other thing of value.
3. It is the consideration in the contract of lease for enjoyment of such property, i. e. the premises.
4. It is to be paid periodically or on specified occasions.
5. It is to be paid to the landlord of the premises by the tenant.
6. It is the creature of contract and is called the ‘Contractual rent”.

Section 3 (vi) of the Act of 1950 does define the term “Standard rent” to mean “ used in relation to any premises, means the rent, therefore, determined in accordance with the provisions of this Act. The word “standard rent” is, thus, a specie of “rent” which has been given a ‘standard’ or it is

‘standardized rent’-fixed according to law. It is also called “statutory rent”—fixed on the basis of a provision of a statute, i.e. the Rent Control Act, or the ‘fair rent’—means reasonable but not favorable. A fixation of standard rent does not mean the fixation of a low rent, favorable, beneficial and to the advantage of the tenant as that would result in the landlord getting an unfair rent. It should be fair to the tenant as well as to the landlord.

There are certain basic differences between ‘rent’ and ‘standard rent’:

1. Rent is the contractual rent defined in Section 105 of the Transfer of Property Act and not in the Act of 1950, the standard rent is defined in Section 3 (vi) of the Act of 1950.
2. Rent is contractual—being based on an agreement between the landlord and the tenant—and there is no intervention of the court, standard rent is fixed by the court under Section 6 or Section 11 of the Act of 1950.

3. Rent once fixed cannot be altered as estoppel would apply, but standard rent operates as res judicata till not re-fixed by the court under the Act of 1950.
4. Rent can be varied by the mutual consent of the parties—the landlord and the tenant, standard rent can be varied on the grounds enumerated in Section 10 of the Act of 1950, after following the procedure laid down in Section 11 of the Act of 1950.
5. Demand and receipt of rent in excess of the agreed rent is neither prohibited nor is an offence, but once standard rent is fixed by the Court, neither excess amount of standard rent can be demanded, nor can it be received.
6. The agreement of lease is void for want of consideration. But under the Act of 1950, the lease does not become void as the court may fix the standard rent under Section 6 of the Act of 1950.

Section 6 of the Act of 1950 is as under:

6. Fixation of standard rent.--(1) Where no rent has been agreed upon or where for any reason the rent agreed upon is claimed to be low or excessive, the landlord or the tenant may institute a suit in the lowest court of competent jurisdiction for fixation of standard rent for any premises.

(2) The Court shall after holding such summary inquiry as it may consider just and necessary, determine the standard rent for such premises and shall, in doing so, act according to the following principles, namely :-

(a) where the premises are let for residential purposes or for any of the purposes of a public hospital, aushadhalaya or dawakhana, a recognised educational institution, a public library or reading room or any orphanage, the standard rent shall not exceed the basic rent increased by 50% thereof; and

(b) where the premises are let for any other purpose, the standard rent shall not exceed two and a half times the basic rent thereof:

Provided that where the premises have been First let after the first day of January, 1965 the standard rent shall not exceed the basic rent thereof :

Provided further that where the fair rent or standard rent for any premises has been determined or re-determined by any court under this Act or by any authority under any law or order repealed or section 30 before the commencement of the Rajasthan Premises (Control of Rent and Eviction)

(Amendment) Ordinance, 1975 and the amount of such fair rent or standard rent is the same as would be determinable as standard rent by the Court under this section, the fair rent or standard rent previously determined or re-determined shall not be disturbed.

Explanation :- For the purposes of this sub-section, the basic rent of any premises shall mean the rent at which the premises were let on the first day of January, 1962 and, if not let on that day, the rent at which they were first let after that day.

(3) where for any reason it is not possible to determine the standard rent of any premises on the principles set out in sub-section (2), the Court shall determine such rent, having due regard to the prevailing rent or standard rent for similar premises in the same locality, the various amenities (such as electricity, water, connection, sanitary fittings, and the like) attached to the premises, the cost of construction, maintenance and repairs thereof, the special reasons, if any, proved by the plaintiff and other relevant considerations.

(4) In fixing the standard rent for any premises under this section, the Court shall determine such rent in respect of the premises in an unfurnished state but may also determine additional charge to be payable on account of fittings or furnishings, and it shall be lawful for the landlord to recover such additional charge from the tenant.

(5) In every case in which the Court determines the standard rent of any premises under this section it shall appoint a date from which the standard rent so determined shall be deemed to have effect:

Provided that such date shall, in the case of a tenant who institutes a suit under this section after the expiration of sic months from the

commencement of his tenancy on the ground of the rent agreed upon being excessive, be the date of the institution of such suit or such later date as the Court may in the circumstances of the case deem reasonable."

Section 7 of the Act of 1950 is as follows:

7. Fixation of provisional rent.--(1) Upon the institution of a suit under section 6, the Court shall forthwith make an order fixing in a summary manner a provisional rent for the premises in question which shall be binding on all parties concerned and shall remain in force till a decree fixing the standard rent therefor is finally made in such suit.

(2) The provisional rent fixed under this section shall also apply to such arrears of rent as, in the case of a tenant who has instituted within six months from the commencement of the tenancy a suit under section 6 on the ground of the rent agreed upon being excessive relate to the period intervening between such commencement and institution.

(3) A suit for the recovery of arrears of rent to which the provisional rent fixed under this section is applicable shall be stayed by the Court upon the payment by the tenant in Court of the total amount due to the landlord on the basis of such provisional rent.

(4) Any failure to pay the provisional rent for any month by the fifteenth day of the next following month shall render the tenant liable to eviction under clause (a) of sub-section (1) of section 13, and all sums due from the tenant as such rent

shall be recoverable from him as if the order under sub-section (1) were a decree of the Court in a suit for periodical payments.

(5) All amounts paid as provisional rent shall be adjusted towards payment of the standard rent finally decreed.

Section 10 of the Act of 1950 deals with the conditions under which the standard rent can be increased. It is as under:

10. Circumstances under which standard rent is liable to increase,--(1) Where the landlord has at any time incurred expenditure on any improvement of structural alteration of the premises, not being expenditure on decoration, maintenance or normal repairs, and such expenditure has not been taken into account in determining the standard rent of the premises, he may increase the rent by an amount which shall secure him a return of income not exceeding seven and a half percent per annum on such expenditure.

(2) Where a part of the premises let has been sub-let by the tenant, then without prejudice to the provisions of section 13---

(a) the landlord may increase the rent payable by the tenant---

(i) in the case of premises let for purpose mentioned in clause (a) of sub-section (2) of section 6, by an amount not exceeding twelve and a half per cent of the rent or standard rent for the part sub-let; and

(ii) in other cases, by an amount not exceeding twenty-five per cent of the rent or standard rent for such part;

(b) the tenant may increase the rent payable by the sub-tenant---

(i) in the case of premises let for purposes mentioned in clause (a) sub-section(2) of section 6, by an amount not exceeding twenty-five per cent of the rent or standard rent for the part sub-let, and

(ii) in other cases, by an amount not exceeding fifty per cent of the rent or standard rent for such part; and

(c) the tenant shall, on being so requested in writing by landlord, supply him within fourteen days thereafter a statement in writing giving full particulars of any sub-letting including the rent charged,

Explanation.--- For the purposes of this sub-section the rent or standard rent of the part sub-let shall be an amount bearing such proportion to the rent or standard rent of the entire premises as may be reasonable, having regard to the extent of the part sub-let and other relevant considerations.

Lastly, Section 11 of the Act lays down the procedure for increase in standard rent as follows:

11. Procedure for increase in rent.---(1) Where the landlord wishes to increase the rent of any premises under section 10, he shall give the tenant notice of his intention to make the increase, and, in so far such increase is permissible under that section it shall be due and recoverable only in respect of the period after the end of the month in which the notice is given.

(2) Every notice under sub-section (1) shall be in

writing signed by or on behalf of the landlord.

(3) If the tenant does not agree to the increase specified in the notice given under sub-section (1) or fails to respond to it within a month from the receipt thereof, the landlord may bring a suit for increase in rent or standard rent in the lowest Court of competent jurisdiction.

(4) The Court shall, after such summary inquiry as it may think necessary, make orders according to law, and a decree shall follow."

These provisions clearly reveal that the court fixes the standard rent under Section 6; the court fixes the provisional rent under Section 7 of the Act of 1950. Section 7 comes into play only after an application for fixation of standard rent has been moved under Section 6 of the Act of 1950. Thus, the former is dependent on the latter provision. The existence of Sections 10 and 11 of the Act of 1950 clearly show that standard rent once fixed is not for perpetuity, but can be revised and re-fixed by the court under certain circumstances. Although the standard rent is fixed qua the premises and not qua the landlord or the tenant, but nonetheless it is revisable.

The basic issue before this court is whether standard rent

once determined by a competent court can be permanently frozen by invoking the doctrine of res judicata, irrespective of any change in the law or the facts.

Section 11 of the Code of Civil Procedure ('the Code', for short) is as under:

> 11. Res judicata.---No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.
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> Explanation I. -- The expression "former suit" shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.
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> Explanation II.-- For the purposes of this section, the competence of a Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.
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> Explanation III.-- The matter above referred to must in the former suit have been alleged by one party and either denied or admitted, expressly or impliedly, by the other.
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> Explanation IV.-- Any matter which might and ought

to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V.-- Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI.-- Where persons litigate bona fide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII.-- The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII.-- An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as res judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised.

In the case of Mathura Prasad Bajoo Jaiswal and Ors v Dossibai N. B. Jeejeebhoy (1970 (1) SCC 613) the Hon’ble Supreme Court elaborately dealt with the doctrine of res

judicata and held as under:

> (i) The doctrine of res judicata belongs to the domain of procedure: It cannot be exalted to the status of a legislative direction between the parties so as to determine the question relating to the interpretation of enactment effecting the jurisdiction of a court finally between them, even though no question of fact or mixed question of law and fact and relating to the right in dispute between the parties has been determined thereby. A decision of a competent court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be re-opened between them in another proceeding.
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> (ii) The previous decision on a matter in issue alone is res judicata: the reasons for the decision are not res judicata. A matter on issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in

issue is a composite decision: the decision on law cannot be dissociated from the decision on facts on which the right is founded.

(iii) A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declared valid a transaction which is prohibited by law.(Emphasis Added)

(iv) Where the law is altered since the earlier decision, the earlier decision will not operate as res judicata between the same parties : Tarini Charan Bhattacharjee's case, ILR 56 Cal 723. It is obvious that the matter in issue in a subsequent proceeding is not the same as in the previous proceeding, because the law interpreted is different. (Emphasis Added)

A question of jurisdiction of the Court, or of procedure, or a pure question of law unrelated to the right of the parties to a previous suit, is not res judicata in the subsequent suit.

(v) A question relating to the jurisdiction of a Court cannot be deemed to have been finally determined by an erroneous decision of the Court. If by an erroneous interpretation of the statute the Court holds that it has no jurisdiction, the question would not, in our judgment, operate as res judicata. Similarly by an erroneous decision if the Court assumes jurisdiction which it does not possess under the statute, the question cannot operate as res judicata between the same

parties, whether the cause of action in the subsequent litigation is the same or otherwise.

(vI) Where the decision is on a question of law, i.e., the interpretation of a statute, it will be res judicata in a subsequent proceeding between the same parties where the cause of action is the same, for the expression “the matter in issue” in Section 11, Code of Civil Procedure means the right litigated between the parties, i.e., the facts on which the right is claimed or denied and the law applicable to the determination of that issue. Where, however, the question is one purely of law and it relates to the jurisdiction of the Court or a decision of the Court sanctioning something which is illegal, by resort to the rule of res judicata a party affected by the decision will not be precluded from challenging the validity of that order under the rule of res judicata, for a rule of procedure cannot supersede the law of the land.

Thus, the doctrine of res judicata is part of the procedural law. It cannot be exalted to the status of a legislative direction. Secondly, the previous decision on an issue would not act as res judicata if since the earlier decision the law has been altered by a competent authority. The competent authority could be the legislature or the court. Hence, once the law has been struck down as unconstitutional, then a decision rendered prior to the law being declared as unconstitutional, such a decision cannot be res judicata for the subsequent suit filed

after the law is declared as unconstitutional.

In the present case the admitted position is that the earlier decision fixing the standard rent was delivered on 23-5-1982. The said decision was rendered under Section 6 (2) of the Act of 1950. However, on 30-3-1999, this court in the case of Khem Chand (supra) struck down Section 6 (2) of the Act of 1950 as unconstitutional. Thus, the very provision under which the order dated 23-5-1982 was delivered stood changed. Once the law was changed subsequently, the order dated 23-5-1982 cannot be considered as res judicata to the present suit filed by the respondent under Section 6 and to the application filed under Section 7 of the Act of 1950. Hence, the contention of the learned counsel for the appellant about the non-maintainability of the suits under Section 6 and of the application under Section 7 of the Act of 1950 is unacceptable. The said suit and application, after the change in law, are certainly maintainable.

In order to understand the fixation of standard rent and increase in standard rent, one has to co-jointly read Sections

6, 10 and 11 of the Act of 1950. Section 6 empowers the Court to fix the standard rent; Section 10 lays down the circumstances under which standard rent is liable to be increased by the landlord; Section 11 lays down the procedure for increasing the rent or standard rent. Section 10 prescribes two circumstances under which the rent or standard rent could be increased: i) where the landlord has incurred expenditure on any improvement of structural alteration of the premises, not being expenditure on decoration, maintenance or normal repairs, or ii) where part of the premises has been sub-let by the tenant. According to Section 11, the landlord is required to give a notice to the tenant. If the tenant does not agree to the increase specified in the notice, then the landlord may bring a suit for increase in the rent or standard rent in the lowest court of competent jurisdiction. According to Section 11(4), “the court shall, after such summary inquiry as it may think necessary, make orders according to law and a decree shall follow”. Section 11(4) is not only similar to Section 6, but also contains the word “according to law”. Since the power to fix the standard rent

lies under Section 6 of the Act of 1950, the court while fixing the standard or while increasing the standard rent would have to be guided necessarily by Section 6(3) of the Act of 1950. According to sub-section (3) of Section 6, while fixing the standard rent, “the court shall determine such rent having due regard to the prevailing rent or standard rent, for similar premises in the same locality, the various amenities (such as electricity, water connection, sanitary fittings, and the like) attached to the premises, the cost of construction, maintenance and repairs thereof, the special reason, if any proved by the plaintiff and other relevant consideration”. (Emphasis added). The term “other relevant consideration” would bring in the considerations as specified under Section 10 of the Act of 1950. Thus, while fixing the standard rent under Section 6 of the Act of 1950, “the expenditure on any improvement of structural alteration of the premises” would be “other relevant consideration” under Section 6 of the Act of 1950.

Moreover, since standard rent is a relative term, since it is

revisable, the court under Section 11(4) would have to consider the parameters laid down by Section 6(3) of the Act. For, the words used under Section 11(4) are in accordance with law. Therefore, the contention of the learned counsel for the appellant that standard rent can be increased only when condition under Section 10 of the Act of 1950 is fulfilled is unsustainable.

The term provisional rent has not been defined in the Act of 1950. But the word “provisional” means temporary, or interim. Thus, under Section 7 of the Act of 1950, the court merely decides the interim rent during the pendency of the proceeding for fixation of standard rent. Section 7 (5) of the Act of 1950 clearly states, “All amounts paid as provisional rent shall be adjusted towards payment of the standard rent finally decreed”. Hence, the provisional rent being paid by the appellant shall be adjusted in the standard rent fixed by the court under Section 6 of the Act of 1950. Therefore, no prejudice is being caused to the appellant by the order dated 9-1-2004.

In the result, this appeal has no force. It is, hereby, dismissed. However, as the case has been pending before the civil court for the last three years, the learned Judge is directed to decide the case within one year from the date of the receipt of the certified copy of this judgment. There shall be no order as to cost.

R. S. Chauhan J.